

AMENDED IN SENATE MARCH 28, 2017

AMENDED IN SENATE FEBRUARY 22, 2017

SENATE BILL

No. 51

Introduced by Senator Jackson

December 5, 2016

An act to add Section 494.7 to the Business and Professions Code, and to add Section 12812.7 to the Government Code, relating to government data.

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as amended, Jackson. Professional licensees: environmental sciences and climate change: whistleblower and data protection.

The California Whistleblower Protection Act requires the State Auditor to administer the act and to investigate and report on improper governmental activities, as defined.

Existing law provides for the licensure and regulation of various professions and vocations by ~~boards within the Department of Consumer Affairs~~ *certain entities within state government*. Existing law establishes various grounds upon which these ~~boards~~ *entities* may take disciplinary action against a licensee to suspend or revoke a license.

This bill would prohibit these ~~boards~~ *licensing entities* from taking disciplinary action, including disbarment, suspension, loss of credential, registration, or other professional privilege, against a public employee or employee of a government contractor, subcontractor, or grantee, as defined to include those persons working in the environmental sciences and climate-change-related fields, in connection with actions taken by that person to report improper governmental action or communicate the results of or information about scientific or technical research in a scientific or a public forum or with the media.

Existing law requires the Secretary for Environmental Protection to coordinate greenhouse gas emission reductions and climate change activity in state government.

This bill would additionally require the Secretary for Environmental Protection to ensure that all scientific information and other data otherwise in the public domain is protected against censorship or destruction by the federal government.

This bill would include findings and declarations related to the measure, including that the purpose of these provisions is, to the maximum extent feasible under state law, to ensure those persons may report improper governmental activity and to continue to make scientific and other information open to the public without fear of losing their professional licenses or credentials.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Current law, including the Rules of Professional Conduct,
4 does not provide adequate guidance and clarity for persons
5 employed by, or representing, governmental organizations to
6 determine the circumstances under which they may properly seek
7 to protect the public interest by reporting improper governmental
8 activity to appropriate enforcement, regulatory, and oversight
9 bodies.

10 (b) There are new efforts underway to limit the freedom of
11 scientists and other professionals working for the federal
12 government to report improper government activity, as well as to
13 restrict or prohibit their freedom to publish scientific information
14 and to freely associate with other parties.

15 (c) The purpose of this chapter is, to the maximum extent
16 feasible under state law, to ensure those persons may report
17 improper governmental activity and to continue to make scientific
18 and other information open to the public without fear of losing
19 their professional licenses or credentials.

20 SEC. 2. Section 494.7 is added to the Business and Professions
21 Code, to read:

22 494.7. (a) For purposes of this section:

1 (1) “Improper governmental activity” means conduct by a
2 governmental organization or by its agent that meets one or more
3 of the following requirements:

4 (A) It constitutes the use of the organization’s official authority
5 or influence by the agent to commit a crime, fraud, or other serious
6 and willful violation of law.

7 (B) It involves the agent’s willful misuse of public funds, willful
8 breach of fiduciary duty, or willful or corrupt misconduct in office.

9 (C) It involves the agent’s willful omission to perform his or
10 her official duty.

11 (2) “Employee” means a person on the payroll of, or working
12 as a contractor, subcontractor, or grantee of, a government
13 contractor, subcontractor, or grantee who works in environmental
14 sciences or a climate-change-related field.

15 (3) “Public employee” means a person on the payroll of any
16 federal agency, the state, its subdivisions, special districts, or any
17 other tax-financed entity who works in environmental sciences or
18 a climate-change-related field.

19 (4) “Scientific or technical research” means the results of
20 scientific activities related to environmental sciences or climate
21 change, including, but not limited to, the analysis, synthesis,
22 compilation, or translation of scientific information and data into
23 formats used in official decisionmaking processes or publications.

24 (b) A ~~board~~ *licensing entity* shall not take disciplinary action,
25 including disbarment, suspension, loss of credential, registration,
26 or other professional privilege, against a public employee or
27 employee of a government contractor, subcontractor, or grantee
28 in connection with actions taken by that person to:

29 (1) Report improper governmental activity, provided that the
30 person takes one of the following actions:

31 (A) Urges reconsideration of the matter while explaining its
32 likely consequences to the organization.

33 (B) Refers the matter to a higher authority in the organization,
34 including, if warranted by the seriousness of the matter, referral
35 to the highest internal authority that can act on behalf of the
36 organization.

37 (C) Refers the matter to the law enforcement agency charged
38 with responsibility over the matter or to any other governmental
39 agency or official charged with overseeing or regulating the matter
40 if all of the following have occurred:

1 (i) The person has taken both actions described in subparagraphs
2 (A) and (B) without the matter being resolved.

3 (ii) The person reasonably believes that the highest internal
4 authority that can act on behalf of the organization has already,
5 directly or indirectly, participated in the improper governmental
6 activity.

7 (iii) The referral is warranted by the seriousness of the
8 circumstances and is not otherwise prohibited by law.

9 (iv) Further action is required in order to prevent or rectify
10 substantial harm to public health, safety, the environment, or the
11 public interest or to the governmental organization resulting from
12 the improper governmental activity.

13 (2) Communicate the results of or information about scientific
14 or technical research in a scientific or a public forum or with the
15 media.

16 (c) This section shall not be construed to require that the
17 improper governmental activity subject to its provisions be related,
18 directly or indirectly, to the matter for which the person is making
19 the referral.

20 SEC. 3. Section 12812.7 is added to the Government Code, to
21 read:

22 12812.7. The Secretary for Environmental Protection shall
23 ensure that all scientific information and other data otherwise in
24 the public domain is protected against censorship or destruction
25 by the federal government.